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UNCLAS SECTION 01 OF 03 HO CHI MINH CITY 000559

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DEPT FOR CA/OCS/CI, L/CA AND CA/VO

E.O. 12958: N/A

TAGS: [CVIS](#) [CASC](#) [KOCI](#) [KFRD](#) [VM](#)

SUBJECT: New Vietnamese Adoption Case Raises Old Concerns

REF: (A) HCMC 1507 (B) STATE 258720

Summary

1. (SBU) Post recently investigated the second case this year in which GVN authorities approved the adoption of a Vietnamese orphan by an Amcit as a "humanitarian exception" to Vietnamese law (refTel A). The adopted child meets the INA definition of an orphan; however, the GVN has confirmed Mission's understanding that Vietnamese law does not yet provide for this type of adoption, pending implementation of a bilateral agreement. Furthermore, the license granted to the agency involved in this case explicitly forbids it from involvement in adoptions¹. Medical issues surrounding this case are also problematic, and investigation indicated a lack of transparency regarding fees. Although the GVN's motivations in this case appear to have been good, the case is still emblematic of the lack of rule of law in Vietnam.

A New "Special Needs" Adoption Case in HCMC

2. (SBU) On May 6, DHS/HCMC forwarded an approved I-600 petition filed by prospective adoptive parent (PAP) Kathleen Renee DICKINSON on behalf of orphan NGUYEN, Thuy Thu (DPOB: 01JUN2002, HCMC). 2On May 10, Conoffs met with PAP and Vietnamese facilitator, Ms. NGUYEN Thon Thi Diem Thuy, an employee of U.S.-based adoption agency Children's Hope International (CHI). PAP explained that she had been working with CHI to find a child to adopt since 2002. In summer 2004, CHI notified her that special needs orphans in Vietnam were available for adoption, and that they had identified a two-year old "HIV-positive turned negative" orphan who had been abandoned at a hospital at the age of six months. PAP agreed to adopt this child. (The CHI facilitator advised post that this is the first of eight orphan adoption cases being processed by the agency involving children who initially tested positive for HIV antibodies, but subsequently tested negative.) During the interview, PAP said she was uncertain about the details of the adoption process, as CHI had handled everything for her. 3

Adoption Approved In Apparent Contravention of VN Law

3. (SBU) According to the CHI facilitator and the Ministry of Justice's Department of International Adoptions (DIA) in Hanoi, this adoption was approved as an "exception" for humanitarian reasons on the basis of the child having "special needs". At present, however, Vietnamese law does not allow for foreign adoptions except by citizens of countries that have concluded a bilateral agreement (except for foreigners resident in Vietnam or Vietnamese emigres), and does not allow for ad hoc exceptions. The GVN is drafting amendments to Decree 68 to allow for special needs adoptions, but Mission was told on May 26th that these amendments are still in the drafting process and have not yet been submitted to the Prime Minister's office for approval.

A 4Lack of Definition for "Special Needs"

4. (SBU) In the present case, DIA apparently deemed the child to be a "special needs" case because she had tested positive for HIV antibodies at a local hospital when she was abandoned there at the age of six months. According to HIV experts consulted by Embassy Hanoi, HIV antibody tests on infants are not useful because blood from children of HIV-positive mothers often contains the mother's HIV antibodies, even when the HIV virus itself has not been passed on. These antibodies disappear from the blood of seronegative children as the children develop their own immune systems. In this case, the child tested negative for HIV three months after the initial test, and tested negative again in three subsequent tests. Despite a positive result on the initial test, this child is healthy, as confirmed by the results of

the IV medical exam.

15. During USG discussions with DIA regarding special needs cases, DIA made clear that it considered a baby testing positive for HIV antibodies to be in the special needs category regardless of whether the child became seronegative subsequently. (There may have been a mistaken view that these children were being cured through early treatment of HIV.) This category of children may indeed be difficult to place, but does not fall within any medical definition of "special needs", and the GVN has yet to provide its own definition of what constitutes "special needs" for its purposes.

U.S. Adoption Agency Operates Despite Legal Restrictions

16. (SBU) Under current GVN law, only approved adoption agencies from countries with bilateral agreements are permitted to operate in Vietnam. The CHI facilitator provided post with a copy of CHI's license dated April 1, 2005, which authorizes CHI to assist "poor children in difficult situations", but states specifically that the organization is not permitted to work on adoption cases. The facilitator confirmed that she is a CHI employee and in fact works on adoption cases. The facilitator said that she personally identified the child in the current case, matched the child with the PAP, assembled the dossier, and presented the dossier directly to DIA in Hanoi.

17. (SBU) In addition to its adoptions work, CHI provides funding for orphanages. The US agency has an agreement with HCMC's Tam Binh Orphanage (where the child resided prior to being adopted), to provide USD 48,535 this year to "support cost of raising children, support the orphanage staff's living conditions, and for administration and project management expenses." CHI provided similar levels of support to Tam Binh for the past three years. The agreement requires Tam Binh to report every six months to CHI and to local authorities on how the funding is used. The CHI facilitator said that the orphanage had not reported to CHI. The orphanage director, Mr. NGUYEN Van Trung, said that he made annual reports. He provided a copy of the report submitted to local authorities, which included only very broad categories of expenses.

Adoption Fees Remain Opaque

18. (SBU) Initially, PAP stated that she did not remember the amounts or purposes for fees paid to CHI. Subsequent interviews with PAP, CHI facilitator, and the orphanage director revealed a fee structure that was lacking in transparency. Following her interview, PAP submitted a list of fees she had paid to CHI, totaling USD 12,660. The largest item on this list of fees was labeled "International Program Fee", in the amount of USD 9,520. This fee included a USD1,000 donation to the orphanage. The orphanage director told conoff that PAPs voluntarily made donations to the orphanage after an adoption, but the CHI facilitator said that the USD 1,000 donation was part of the total fee, and was provided by the facilitator with the PAPs subsequently signing a donation book when visiting the orphanage. Until our interview, the PAP seemed unaware that she had made a donation to the orphanage.

Comment

19. (SBU) The child in this case is an orphan under the INA and has no medical ineligibilities. Since this adoption is an exception to existing GVN law as written, we confirmed with the DIA that the adoption decree submitted by the PAP was considered valid before issuing the immigrant visa on May 26th.

10. (SBU) There are three issues in this case that highlight the problem of adoptions in Vietnam: First, this adoption is clearly not consistent with GVN law as written; second, the agency working this adoption is not permitted to engage in this activity in Vietnam; and third, the basis for deeming this child a special needs case is scientifically suspect. 6

WINNICK

1It's not forbidden from operating, just from being involved with adoptions, right?

2Is this relevant or unusual?

3Moved to section on fees below.

4An orphan does not have to be sick to be special needs. In the US there are a lot of healthy children that are considered to be special needs, such as African-American

children and older children.

5I'm guessing this is essentially CHI's fee for the adoption? To me, it doesn't seem out of line with what adoptions cost elsewhere.

6Not true. "Special needs" is not a scientific determination, but a social one. Besides, we've been told that the positive, then negative test is scientifically and legitimately possible.